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Report of the Special Rapporteur on the right to food, Olivier De Schutter

Addendum

Mission to Malaysia*

Summary

The present report, submitted pursuant to Human Rights Council resolution 22/9, contains the findings of the Special Rapporteur on the right to food on his visit to Malaysia from 9 to 19 December 2013. Noting impressive achievements made in reducing poverty and food insecurity and examining the existing legal, institutional and policy framework, the Special Rapporteur outlines what he sees as main steps the country should now take towards the full realization of the right to food. These steps include moving towards agrifood policies that are both more resilient and more sustainable; further improving living conditions, building on the recent introduction of a minimum wage for the working poor, strengthening social protection by moving from ad hoc schemes to the guarantee of legal entitlements and addressing obstacles faced by vulnerable communities; and tackling new challenges related to unhealthy diets.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission only.

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Annex

[English only]

Report of the Special Rapporteur on the right to food on his mission to Malaysia

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I. Introduction

1. The Special Rapporteur on the right to food, Olivier De Schutter, conducted a visit to Malaysia from 9 to 18 December 2013, at the invitation of the Government. During his visit, he met with senior federal government officials from the Ministry of Foreign Affairs, the Ministry of Agriculture and Agro-Based Industry, the National Security Council, the Ministry of Women, Family and Community Development, the Ministry of Human Resources, the Ministry of Rural and Regional Development, the Department of Orang Asli Development, the Ministry of Urban Well-being, Housing and Local Government, the Ministry of Natural Resources and Environment, the Ministry of Health, the Ministry of Education, the Attorney General's Chamber, the Ministry of Domestic Trade, Cooperatives and Consumer Affairs, the Prime Minister's Department (Economic Planning Unit and Performance Management and Delivery Unit), the Department of Islamic Development, and the Federal Land Development Authority. A series of meetings were also held with senior representatives of ministries of the State governments of Sabah, in Kota Kinabalu, and of the State of Sarawak, who met with the Special Rapporteur in Putrajaya.

2. Moreover, the Special Rapporteur met with members of the Parliament of Malaysia and of the Sabah State Legislative Assembly, as well as with members of the United Nations country team. He also convened five round-table discussions with representatives of non-governmental organizations, indigenous communities of West and East Malaysia, trade unions, farmers associations and academics, held in the Federal Territory of Kuala Lumpur and the States of Selangor and Sabah. In Petaling Jaya, Selangor, the Special Rapporteur met with residents of a low-cost flats neighbourhood (Desa Mentari); and in the village of Terian, Sabah, he met with residents of seven villages of the Ulu Papar region.

3. The Special Rapporteur is most grateful to the Government for having facilitated his visit and for the open and constructive spirit in which dialogues were conducted. He expresses his thanks and appreciation to the wide range of people and local communities with whom he was able to meet. He also thanks the United Nations country team and the United Nations Resident Coordinator in Malaysia for the excellent support provided.

II. General context

4. Malaysia has enjoyed sustained economic growth since its independence in 1957, and today is known for its high human development standards and its status as an upper-middle-income country. Since the 1970s, the economy has gradually changed from being one based on primary production to one diversified with important secondary (manufacturing and production of processed goods) and tertiary (services) sectors. Agriculture accounted for more than 20 per cent of gross domestic product (GDP) in 1985. By 2012, it had dropped to 7.3 per cent of GDP, surpassed by other sectors of the economy, including services (56.4 per cent), manufacturing (24.9 per cent) and mining and quarrying (8.4 per cent).

5. With its move away from agriculture, Malaysia has seen a rapid growth in urbanization. Between 1970 and 2010, the proportion of the population living in urban areas increased from 27 per cent to 71 per cent.[1] At the time of the Special Rapporteur's visit, the population of Malaysia was estimated at 29 million and projected to increase by a

[1] See www.statistics.gov.my/portal/index.php?option=com_content&id=1215.

further 10 million by 2040.[2] These figures do not include undocumented migrant workers living in the country (see paras. 53 to 59 below).

III. Food insecurity and nutrition

A. Situation

6. Malaysia has made impressive strides in reducing poverty in recent decades. According to statistics provided by the Government of Malaysia, from 1995 to 2012, the incidence of aggregate national poverty was reduced from 8.7 to 1.7 per cent. The income poverty gap between urban and rural areas was also reduced. The rate of urban poverty dropped from 3.6 per cent to 1 per cent, while the rural poverty rate went from 14 per cent to 3.4 per cent. Disparities in income levels among Malaysia's 13 States and three Federal Territories have also been reduced. Notably, Sabah has witnessed the greatest reduction in the poverty rate, dropping from 19.7 per cent in 2009 to 8.1 per cent in 2012.

7. The above-mentioned poverty statistics are based on national Poverty Line Income (PLI), which takes into account the size and geographical location of households. One of the components of the PLI is the monetary value of a basic food basket needed by a family allowing access to what is considered a balanced diet, including cereals and cereal products (rice, wheat flour), chicken, eggs and fish, milk, oil and fats, sugar, vegetables and fruits and pulses (food PLI). The other component of the PLI measurement is set according to the cost of a range of non-food items, such as clothing, housing and transport costs (non-food PLI).[3] Those with an income under the PLI are considered poor in national statistics, while the population with an income under the Food PLI are described as "hard-core poor".

8. The number of households living in hard-core poverty, unable to meet their basic food needs, decreased from 0.7 per cent in 2009 to 0.2 per cent in 2012, while the incidence of hard-core poverty for urban and rural areas dropped from 0.2 per cent and 1.8 per cent in 2009 to 0.1 per cent and 0.6 per cent in 2012, respectively. Given these numbers, the Government considers that food insecurity and malnutrition related to poverty to have been practically abolished. Nevertheless, there are still pockets of poverty to be tackled, and the obstacles still faced by vulnerable communities in their access to an adequate diet must be removed.

9. Two groups stand out as particularly vulnerable. The first is the population of indigenous communities, accounting for some 12 per cent of the national population. The second is the non-citizen population, which, according to the International Labour Organization,[4] comprises some 3.8 million migrant workers (around 14 per cent of the total population) and about 200,000 refugees and asylum seekers. Notably, national poverty statistics do not include the large number of unskilled migrant workers, who are among the poorest in the country. Similarly, while the Government recognizes the particularly vulnerable situation of indigenous communities and specifically targets poverty alleviation

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[2] Population Projections 2010-2040, Department of Statistics, Malaysia, November 2012, available at www.statistics.gov.my/portal/download_Population/files/population_projections/Population_Projection_2010-2040.pdf.

[3] Government of Malaysia, Household Income and Basic Amenities Survey Report 2012 (available from www.statistics.gov.my/portal/index.php?option=com_content&view=article&id=1640&Itemid=111&lang=en), pp. 111-113.

[4] ILO, Quarterly Briefing Note, October – December 2013, Malaysia, available from www.ilo.org/asia/info/WCMS_218162/lang--en/index.htm.

efforts at these groups, the migrant population is conspicuous by its absence in social policies.

10. While national statistics and household surveys do not provide disaggregated data on the poverty and food insecurity situation of specific indigenous communities in Sabah and Sarawak, official statistics show higher levels of poverty among the Orang Asli, the indigenous communities of peninsular Malaysia. Although poverty levels among the Orang Asli have been reduced in recent decades, in 2010, 31.16 per cent still lived below the income poverty line,[5] around 10 times more than the national average. Furthermore, monetary income may not be an adequate gauge of vulnerability of indigenous communities whose livelihoods depend to a significant extent on their surrounding national resources. The distinct challenges affecting the right to food of indigenous populations is discussed below (see sect. VI).

B. Availability of statistical data

11. In order to effectively target national efforts to eliminate poverty and to ensure access to adequate food for all, the collection and analysis of appropriately disaggregated data on the situation of specific population groups are essential. Such data collection and analysis must be carried out periodically to identify vulnerable groups and to monitor continuously the impact of policies and programmes to improve their situation.

12. The Special Rapporteur notes with interest the recent establishment of a national database (E-kasih), which was designed to register vulnerable low-income households across the country. He regrets to note, however, that, in the case of independent observers, including national civil society organizations and academia, access to information on the situation of specific population groups is limited. The disaggregation of data in national household surveys is limited to geographical location (districts and rural and urban populations) and three main population groups (Chinese, Indians and Bumiputra). Such broad categories do not, however, allow for more detailed identification of poor and vulnerable groups in society. Equally, national household surveys do not present statistics disaggregated by gender. In 2006, the Committee on the Elimination of Discrimination against Women also noted the difficulty in finding disaggregated data on poverty rates and the socioeconomic status of women.[6]

IV. Legal, institutional and policy frameworks

A. Human rights framework

13. Malaysia has recognized the right to adequate food though its commitments under international human rights law. It is party to three of the nine core international human rights treaties – the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities – which each contain provisions specifically related to the right to adequate food.[7]

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[5] See A/HRC/WG.6/17/MYS/1, para. 68.

[6] CEDAW/C/MYS/CO/2, paras. 15 and 19.

[7] See in particular the Convention on the Rights of the Child, arts. 24(2)(c) and (e), 27(3); the Convention on the Elimination of All Forms of Discrimination against Women, arts. 25(f) and 28(1); and the Convention on the Rights of Persons with Disabilities, arts. 1, 3, 12(2), and 14.

14. The Federal Constitution of Malaysia also recognizes elements of the right to food. In part II, the Constitution provides for a range of "fundamental liberties", such as the right to life and personal liberty (art. 5), freedom of movement (art. 9) and freedom of speech, assembly and association (art. 10), all of which are relevant to the right to adequate food. The Constitution also protects against discrimination, including in access to employment and services, which allow people to have access to adequate food. Specifically, article 8 provides that "except as expressly authorized by this Constitution, all persons are equal before the law and entitled to its equal protection", and prohibits discrimination "against citizens on the ground only of religion, race, descent, gender or place of birth".

15. Malaysia has yet to accede to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol thereto, and the International Covenant on Civil and Political Rights and Optional Protocols thereto, which together with the Universal Declaration of Human Rights constitute the International Bill of Human Rights. The State has also yet to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. In this regard, the Special Rapporteur welcomes the statement made by Malaysia in the context of the universal periodic review in 2009 that the Government was seriously considering the changes required in domestic legislation and policies to accede to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and the Optional Protocol thereto.[8]

16. While taking note of the assessment made by the Human Rights Commission of Malaysia (SUHAKAM) that the Government had not made any concrete move to accede to any international human rights instruments,[9] the Special Rapporteur is encouraged that the Government mandated the formulation of a national human rights action plan for Malaysia in October 2012, and that a steering committee under the Prime Minister's Department is now coordinating the development of such a plan.

B. Policy framework

17. The overarching policy objective set out in Vision 2020, formulated in 1991, and a series of national development policies that have since followed is to transform Malaysia into an advanced, high-income country by 2020. The specific targets set for 2020 include raising the gross national income per capita to $15,000.[10] With that target in mind, the State has developed an array of policy initiatives outlined in the Tenth Malaysia Plan for the period 2011-2015, the Economic Transformation Programme and the Government Transformation Programme.

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[8] A/HRC/11/30, para. 10.

[9] SUHAKAM, Annual Report 2012 (available from www.suhakam.org.my/wp-content/uploads/2013/11/SUHAKAM-BI-2012.pdf), p. 23.

[10] High-income countries are defined by the World Bank as those with a gross national income per head of at least $12,616 (2012 figures). In 2012, income per head in Malaysia stood at $9,800. See World Bank, *Malaysia Economic Monitor: Harnessing Natural Resources*, June 2013 (available from www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/07/02/000442464_20130702112156/Rendered/PDF/791540WP0P1325370MEM80377356B00PUBLIC0.pdf), p. 27.

18. The Economic Transformation Programme focuses on 12 national key economic areas, identified as particularly important to economic growth. These key areas include palm oil and agriculture. The Government Transformation Programme identifies seven national key results areas, assigning lead responsibilities on each result area to individual ministries. Consistent with the focus of the Tenth Malaysia Plan on "moving towards inclusive socioeconomic development", three of the results areas concern "raising living standards of low-income households", led by the Minister for Women, Family and Community Development; "improving rural development", led by the Minister for Rural and Regional Development; and "addressing the cost of living", led by the Deputy Prime Minister.

19. The Tenth Malaysia Plan refers to four key strategies to achieve inclusive socioeconomic development:

- Elevating the livelihoods of the bottom 40 per cent of households
- Enhancing economic participation of the Bumiputra
- Ensuring that basic physical infrastructure is accessible to all
- Enabling a progressive and more inclusive society

20. The focus on the economic empowerment of the Bumiputra ("sons of the soil") has been a mainstay of Government policy since the New Economic Policy (1971-1990). The Bumiputra is not a legal term: it refers broadly to citizens considered indigenous to Malaysia, and excludes members of the Chinese and Indian ethnic groups who account respectively for 24.6 per cent and 7.3 per cent of the population. National policies have established an affirmative action scheme to advance the Bumiputra majority (67.4 per cent of citizens). These policies have been developed in line with article 153 of the Federal Constitution, which refers to the need "to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak", and are justified by the Government with reference to a need to bridge socioeconomic disparities between the country's ethnic groups.

V. Food availability and agricultural production

21. The agricultural sector can be grouped into two sub-sectors: the agro-industrial commodities sub-sector, comprising oil palm, rubber, cocoa, tobacco, pepper and timber; and the agrifood sub-sector, which includes rice, fruit and vegetables, livestock and fisheries. Plantation-based agriculture has a very long history in Malaysia, having also been a cornerstone of the colonial economy.

22. The fishing sector continues to play an important role in providing fish as a source of food and protein. Malaysia is self-sufficient in fish products (with a self-sufficiency rate of 134 per cent in 2012); in 2012, the sector contributed about 1.3 per cent to GDP. Apart from a fishing fleet of more than 54,000 vessels, the country is also expanding aquaculture production through the development of aquaculture industrial zones covering more than 28,000 hectares.

A. Increasing levels of self-sufficiency for staple foods

23. Malaysia depends on imports for most of its foods. The food trade deficit grew from RM1 billion in 1990 to RM13 billion in 2013. The country is self-sufficient in some food commodities, such as poultry (self-sufficiency rate of 128 per cent), eggs (115 per cent) and

fisheries (101 per cent), but not in others, such as rice (71 per cent), fruit (66 per cent), vegetables (41 per cent), beef (29 per cent), mutton (11 per cent) and milk (5 per cent).[11] Of these commodities, self-sufficiency in rice is considered the most important given that rice is the staple food of the majority of the population.

24. As it underlined in the National Agrifood Policy for 2011-2020, the Government is well aware of the need to raise the levels of self-sufficiency, wherever possible, as the prices of food commodities on international markets will become more volatile and higher in the future because of the effects of climate change, increasing input costs, the competitive use of food for biofuel production, population growth and changing consumer preferences.[12] The objective of the Policy is to reduce dependency on imported food, to increase the revenue of farmers and agro-entrepreneurs, and to allow the agricultural sector to develop into a steady and resilient industry.[13] The Policy is accompanied by a number of schemes for agricultural revitalization, such as the Muda Agricultural Development Authority and the New Concept Joint-Ventures on Native Customary Rights land in Sarawak.[14]

B. Improving the sustainability of food production by adequate agronomic choices

25. Agrifood policies in Malaysia face specific challenges of relevance to the realization of the right to food. First, the expansion of commercial tree crops, in particular for oil palm, combined with urbanization has led to greater competition for farmland, in a context in which the Government has pledged not to clear more than 50 per cent of virgin rainforest for plantations. Second, monocropping schemes have been prioritized, at the expense of intercropping schemes or more diversified farming systems integrating trees with non-perennial crops and small animals. These two characteristics combined reduce the State's ability to achieve adequate levels of self-sufficiency for some foods. They also entail high rates of deforestation and lead to greenhouse gas emissions, the contamination of soils and water and rapidly decreasing fish stocks.

26. In response to the above-mentioned challenges, the Government has introduced programmes to optimize the use of resources on a sustainable basis (including recycling waste products for food production) and to ensure efficient land use (including soil and water conservation).[15] It also seeks to encourage sustainable farming through the Good Agricultural Practices (MyGAP) schemes, including the Malaysian Farm Good Agricultural Practice Scheme (SALM), which allows vegetables and fruits to be branded as "Malaysia's Best". In the context of food supply chains that are increasingly demand-driven rather than supply-driven and as consumers seek to be reassured about the sustainability of their purchasing practices, such schemes also represent an asset in gaining access to export markets, particularly the high-value markets of countries belonging to the Organization for Economic Cooperation and Development.

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[11] Government of Malaysia, National Agrifood Policy for 2011-2020, published on 15 December 2011, p. 23.

[12] Ibid., p. 2.

[13] See Ministry of Agriculture and Agro-based Industry Malaysia (2013),www.kada.gov.my/en/web/guest/dasar-agro-makanan-negara.

[14] Marcus Colchester and Sophie Chao for Forest Peoples Programme, *Updates on Agribusiness and Large-Scale Land Acquisitions in Southeast Asia*, Brief No. 1 of 8: Regional Overview (2013), p. 8.

[15] Wahid Murad et al, "Review of Malaysian agricultural policies with regards to sustainability", *American Journal of Environmental Sciences*, 4 (6), 2008, p. 610.

27. More, however, could be done in this regard. Despite the efforts of the National Agriculture Training Council, the Special Rapporteur was struck by the lack of attention paid to agroecological modes of production in the training and support programmes of the Ministry of Agriculture and Agro-Based Industry. He refers in this regard to his report on the contribution of agroecology to the realization of the right to food[16] and to the emerging consensus on the need to move to less input-intensive and more knowledge-intensive types of production, placing the restoration of soil health at the centre of agronomic choices.

C. Supporting rural development

28. The Special Rapporteur studied the experience of the Federal Land Development Authority (FELDA) in addressing poverty in rural areas. Established in 1956, with a mandate to fight poverty by giving land to the landless, FELDA has organized smallholder farms growing cash crops (primarily palm oil) in a scheme that currently involves 112,625 families and more than 300,000 hectares of land across the country, managed by FELDA as commercial estates. The programme has been highly successful in raising the incomes of the original poor settlers and their families, for whom FELDA acts as a trustee. Work on plantations has been increasingly carried out by migrant workers, while settler families rely on dividends from the profits generated through the cultivation of their shareholdings in the FELDA estates.

D. Challenges specific to the palm oil industry

29. Palm oil plays an important role in the agronomic landscape of the country, as well as in its economy. About 5 million hectares of arable land (out of a total of around 7 million hectares in the country) are dedicated to palm oil production. Malaysia is the second largest producer of palm oil in the world (after Indonesia) and the first exporter, producing 39 per cent of all palm oil and accounting for 44 per cent of global exports.[17] Despite the diversification of the economy, in 2013, palm oil still accounted for 6.3 per cent of the country's total exports,[18] and represented a significant percentage of sales tax revenues for State Governments (30 per cent in Sabah).

30. While palm oil production has been a key source of revenue for Malaysia, the extensive utilization of arable land for palm oil cultivation has meant that less land is available today for the production of food crops, thereby lowering the State's levels of self-sufficiency in certain staple foods, in particular rice. This exposes Malaysia to price shocks on international markets.

31. The expansion of oil palm plantations has also had agronomic and environmental consequences. Monocropping oil palm depletes the soil of its nutrients and, because it is input-intensive, results in the pollution of soil and water sources owing to the intensive use of fertilizers. Oil palm has been a major factor in the loss of tropical rainforest in Malaysia, a process that continues largely unabated.[19] In fact, despite the Government's commitment to a cap of 50 per cent for the clearing of forests, the pace of deforestation has increased

[16] See A/HRC/16/49.

[17] See www.mpoc.org.my/Malaysian_Palm_Oil_Industry.aspx.

[18] Department of Statistics, Malaysia External Trade Statistics, September 2013, available from www.statistics.gov.my/portal/images/stories/files/LatestReleases/trade/bi/Sept13/External_Trade_Sept13_Bi.pdf.

[19] UNEP Global Environmental Alert Service, "Oil palm plantations: threats and opportunities for tropical ecosystems, December 2011, available from http://www.unep.org/pdf/Dec_11_Palm_Plantations.pdf, p. 5.

over the past decade as a consequence of the expansion of palm oil plantations and timber logging.[20] It is estimated that, from 1990 to 2005, palm oil production in Malaysia increased by between 55 and 59 per cent (0.83 – 1.1 million ha) through forest conversion.[21] In addition to its impact on the ecosystem and biodiversity, forest degradation caused by agriculture and forestry is estimated to account for 16 per cent of Malaysia's greenhouse gas emissions.[22] The gains from a slower rate of deforestation in reduced greenhouse gas emissions would be significant: if implemented today, a mere 1 per cent cut in the deforestation rate could lead to fewer emissions equal to about 3.34 Mt of CO_2 by 2020.[23]

32. Lastly, palm oil plantations in Malaysia rely heavily on the availability of a cheap and compliant workforce, made up of foreign migrant workers primarily from the Philippines and Indonesia, as discussed below.

33. Concerns about the social and environmental impact of palm oil production led to the establishment of the Roundtable on Sustainable Palm Oil (RSPO), a private multi-stakeholder initiative with a secretariat based in Kuala Lumpur. Some 14 per cent of palm oil is today certified under the RSPO, including that produced by a total certified area of 1,092,423 in Malaysia, involving more than 100 farms working under 13 plantation companies.[24] RSPO certification is based on compliance with eight principles, including environmental responsibility and conservation of natural resources and biodiversity (principle 5) and responsible consideration of employees, and of individuals and communities affected by growers and mills (principle 6). While bearing in mind the need to improve the balance between the production of cash crops and food production for local consumption, the Special Rapporteur encourages efforts to improve the sustainability of palm oil production. While the RSPO could be strengthened, any attempt to weaken the sustainability criteria its principles embody must be discouraged.

VI. Food accessibility

34. Accessibility requires that individuals are able to either produce food for their own consumption or to purchase food without compromising other basic needs. Food should also be physically accessible to all people, including those living in remote areas and the physically vulnerable, such as older persons or persons with disabilities.

A. Own production

35. The number of people relying on their own agricultural production, foraging or fishing to meet their food needs in Malaysia is declining, due to the agrarian transition and changing lifestyles, as well as to the emphasis on commodity agriculture and the conversion of farmland into palm oil and rubber plantations.

36. While some communities practice subsistence agriculture, particularly indigenous communities living in remote areas, smallholder agriculture is dominated by the cultivation of commercial crops and commodities (mainly palm oil and rubber) rather than food crops. The Special Rapporteur encourages the Government to increase efforts to support

[20] World Bank, *Malaysia Economic Monitor*. (see footnote 10), p. 60.

[21] Koh and Wilcove 2008, in ibid., p. 60.

[22] Ibid., p. 60.

[23] Ministry of Natural Resources and the Environment 2011, in ibid., p. 60.

[24] See *www.rspo.org/en/certified_grower*.

smallholders in the production of food crops as a means to improve access to adequate diets in rural communities.

37. The fishing sector provides direct employment to some 136,500.[25] Many are small-scale fishers, coexisting with large-scale commercial operators.[26] The Special Rapporteur notes with interest several initiatives undertaken to support small-scale fishers and promote sustainable fishing practices, including the regulation of fishing of different types of vessels within designated fishing zones, reserving the coastal zones (within five nautical miles off-shore) to artisanal small-scale fishers.

B. Access to decent work and a living wage

38. Ensuring in law access to decent work and a living wage is a key factor for families and individuals who rely on an earned income to meet their food needs. In this regard, the Special Rapporteur commends the adoption in 2011 of a minimum wage across Malaysia. Prior to the introduction of the minimum wage, 33.8 per cent of private sector workers earned less than RM700 a month, well below the 2007 PLI of RM750 per month/per household. The introduction of the minimum wage should .o help ensure a higher standard of living for the working poor across Malaysia and that the working poor are not left behind in Malaysia's move towards high-income status.

39. Under the National Wages Consultative Council Act (No. 732) of 2011, as of 1 January 2013 (1 July for small businesses), the minimum wage for private sector employees was set at RM800 for workers in Sabah, Sarawak and Labuan, and RM900 per month for employees in peninsular Malaysia. This basic wage must exclude any additional payment allowances provided by employers. It applies to all employees, whether local or foreign, and in all economic sectors, except those in the domestic service sector, such as gardeners, child minders and housekeepers. The minimum wage also applies to sectors in which wages are not paid on an hourly, weekly or monthly basis. In particular, estate and plantation owners must pay employees at least a minimum wage, even if they are paid on a pieces-rate, tonnage, trip or commission basis. Employers are required to supplement the wages of employees if their income does not meet the minimum wage.

40. Enforcement of the minimum wage is conducted by labour officers, who review individual workplaces on a scheduled rotation of seven years. Adjustments to the minimum wage made on the basis of the recommendations of the National Wages Consultative Council, also established under the Act, to conduct studies on all matters concerning minimum wages and make recommendations to the Government.

41. The Special Rapporteur welcomes the adoption of the minimum wage as a means to ensure more equitable development. However, while acknowledging that the minimum was set taking into account the median wages in different parts of the country and the need to balance the interests of employers against those of the workers, he expresses concern at the rate at which the minimum wage was set. For a minimum wage to help to ensure access to an adequate standard of living, it must provide at least a living wage, allowing access to housing, food, education, health care and other basic necessities. The current rate for the minimum wage –RM800 in Sabah, Sarawak and Labuan, and RM900 per month in

[25] Annual Fisheries Statistics 2012, Department of Fisheries, Malaysia (available from www.dof.gov.my/en/perangkaan-perikanan-tahunan-2012), table 1.3.

[26] Chubashini Suntharalingam and Charles Santiago, *The impact of AFTA on Malaysian Economy and Small-Scale Producers* (Seacon, 2006) (available from www.seacouncil.org/seacon/images/stories/publications/afta_malaysia.pdf), p. 6.

peninsular Malaysia - does not provide a basic living wage to Malaysia's poor and hard-core poor. Though the median wages in Sabah and Sarawak (RM577 and RM738 respectively) were lower than in the rest of the country when the minimum wage was introduced, the costs of living may be higher: the PLI for a 5-member household is RM830 in peninsular Malaysia, RM1090 in Sabah and RM920 in Sarawak. Community members with whom the Special Rapporteur met during his visit uniformly expressed concerns that the PLI was not sufficient to meet a basic standard of living for families in Malaysia. With the minimum wage set well under the PLI for Sabah and Sarawak, and not considerably above the PLI for peninsular Malaysia, the Special Rapporteur remains concerned that, despite the welcome establishment of a minimum wage, Malaysia does not guarantee a living wage that will lift people out of poverty. Households that rely on one income, paid at the minimum wage, or that are in precarious employment may remain in poverty. Similarly, the urban poor, who face high transportation costs and public housing on the fringes of urban areas, may spend most of their wages earned at the minimum rate on transportation to and from work, and will therefore not be left with adequate funds to meet their food needs. The Special Rapporteur encourages the National Wages Consultative Council, when reviewing the Minimum Wages Order (in accordance with Section 25 of Act No. 732), to take into account the requirement that the minimum wage should correspond at least to a living wage, as defined above.

42. The Special Rapporteur also expresses his concern at the exclusion of the domestic service sector from minimum wage requirements, although some domestic workers do receive a minimum wage under bilateral inter-governmental agreements. Individuals employed in domestic service are often the most vulnerable to abuse from their employers and, owing to the nature of their work in the home, are hidden and unable to seek redress for human rights violations. Employers often retain significant portions of wages for room and board, and fail to pay overtime. Malaysia should amend the National Wages Consultative Council Act to include domestic workers, and to ensure that room and board are considered additional payment allowances, not to be calculated as a part of the minimum wage.

43. In addition, with regard to access to a living wage, the Special Rapport noted with concern reports on the use of child labourers, primarily in the plantation sector. While Malaysia regulates the employment of children through the Children and Young Persons (Employment) Act 1966 (Act 350), it has been reported that between 72,000 and 200,000 children of undocumented migrants work on palm oil plantations.[27] While these figures are impossible to verify, such reports should prompt the Government to investigate the situation and take measures to ensure and protect the best interests of the child, as required under article 3 of the Convention on the Rights of the Child. The Special Rapporteur has concerns that piece-rate rather than salaried payment schemes in the plantation sector encourage parents to have their children assist in work. This is especially a concern for the children of undocumented migrant workers, who have no access to education and, as a result, have idle time that can be spent on labour.

C. Social protection

44. Social protection is an essential means of access to food, for those who are unable to work or to produce their own food. It can include a wide range of services, from food aid, income support and health care to housing allowances that aim to offer protection against

[27] See Humanity United, Exploitative Labor Practices in the Global Palm Oil Industry, 2013, available from http://humanityunited.org/pdfs/Modern_Slavery_in_the_Palm_Oil_Industry.pdf, p. 38.

the consequences of illness, accident, loss of income, inadequate income, parenthood and old age. Malaysia provides a range of social protection schemes for the poor and hard-core poor implemented by the federal, State and urban governments, as well as by a host of ministries.

45. Rather than assistance-based measures, Malaysia has generally prioritized employment-oriented schemes that seek to assist individuals in entering and remaining in the workforce. For example, at the national level, the 1AZAM Programme aims to lift low-income households out of poverty by means of employment, entrepreneurship, agricultural activities and services. Specific programmes under 1AZAM provide economic resources to enable the poor to venture into agriculture and agro-based initiatives, opportunities to start small business, to enter the service sector or to become self-employed, and job-matching and placement. Also at the national level, the Ministry of Rural and Regional Development coordinates employment-based programmes specifically focused on rural communities, including income enhancement through participation in economic projects, skills training and career development. At the State level, Sarawak focuses on enhancing human capital development through awareness-raising programmes, agricultural training and education assistance, as well as income-generating activities, while entrepreneurial schemes in Sabah, such as the Mini Estet Sejahtera, focus predominately on developing land and water through palm oil, rubber and aquaculture as a means to increase the income of poor households. To date, the Mini Estet Sejahtera has had more than 2,000 participants, engaged in more than 48 enterprises. Other programmes in Sabah include the Program Pembangunan Rakyat Termiskin, which facilitates the creation of joint ventures to which the hard-core poor contribute land to be developed, and Kampung Sejahtera, which seeks to increase human capital.

46. Another set of social protection schemes seek to assist the poor and hard-core poor by providing access to food at below-market rates. A basket of 12 essential items are subsidized, including wheat flour, chicken, cooking oil and bread. Price controls are established for certain food items during festive seasons. 1Malaysia initiatives, including the 1Malaysia stores (Kedai Rakyat 1Malaysia), which aim to provide access to wide range of basic foods (predominantly those with long shelf-lives rather than fresh produce) at a reduced price, also support access to food. In addition, the Price Uniformity Programme, renewed under the 2014 federal budget, seeks to ensure that the cost of essential food items are the same in rural and urban Malaysia, as well as in East and West Malaysia, by subsidizing the transportation costs for these items.[28]

47. Lastly, a number of programmes provide access to income, cash transfers or transfers in kind that assist individuals and families in meeting their basic needs. The federal Government's BR1M programme, for example, provides individual cash transfers to families on an ad hoc basis, not exceeding one transfer per year. In his 2014 budget speech, the Prime Minister announced BR1M payments of between RM300 and RM700, with amounts depending on family size and income. Similarly, the KAR1SMA programme provides social assistance, in the form of financial assistance, access to services by State institutions, community assistance and counselling, to benefit children, senior citizens, the disabled, and police and army widows. The Federal Welfare Assistance scheme, which covers peninsular Malaysia, provides additional financial assistance to individuals or families in financial distress for a limited period of time or for the period required to help them secure financial self-sufficiency. With respect specifically to the provision of food, the Ministry of Urban Well-being, Housing and Local Government provides RM80 per

[28] See the speech of the Prime Minister on the 2014 budget, 25 October 2013 (available from www.pmo.gov.my/?menu=speech&page=1676&news_id=680&speech_cat=2), paras. 199-200.

month, to be spent on household groceries, to the hard-core poor in the E-kasih system (see para. 12 above), who are not above 60 years old, reside in households comprising at least five persons with a per capita income of RM130 or less per month. In 2013, the programme reached 3,200 recipients. The Ministry of Health also provides food baskets specifically aimed at rehabilitating malnourished children from hard-core poor families.

48. While the Special Rapporteur welcomes the efforts made at all levels of government to ensure access to adequate food as part of an adequate standard of living, a number of concerns arose from the consultations held during his visit.

49. First, community members from Sabah, Sarawak and peninsular Malaysia with whom the Special Rapporteur met regretted the limited availability of the 1Malaysia initiatives and, as a result, their limited impact in alleviating the high cost burden of purchasing food for the poor. Similarly, individuals from rural and remote communities indicated that, even with the Price Uniformity Programme, the cost of goods in rural areas, as well as in Sabah and Sarawak more generally, remained above that in urban areas and peninsular Malaysia.

50. Second, given the overwhelming focus on providing opportunities to the poor to help them to engage in gainful employment, the segments of the population who are unable to work – such as the elderly, children, often single mothers and persons living with severe disabilities – may not be receiving adequate support to meet their basic needs, including access to food. Similarly, with rising housing, food and transportation costs, there may be populations of working poor in need of greater assistance to achieve an adequate standard of living and access to food, as well as a social safety net in place to mitigate the impact of sudden injury, loss of employment or inability to work.

51. Third, the Special Rapporteur was struck by the ad hoc manner in which many of the social protection schemes in Malaysia are instituted, their generally limited reach, and the lack of legal protection afforded under the schemes. He therefore welcomes the plans of the Economic Planning Unit to develop a comprehensive social safety net, integrating and coordinating the various efforts of different ministries into one coherent policy, and to introduce a rights-based approach to social protection. It is time that Malaysia moved to a rights-based approach and redefined as legal entitlements benefits that have traditionally been seen as voluntary handouts. Such an institutionalization of social protection schemes facilitates decentralized monitoring of their implementation and broader accountability, acting as a safeguard against elite capture, corruption, political clientelism or discrimination. According to International Labour Organization (ILO) recommendation No. 202 concerning national floors of social protection, national laws and regulations [establishing basic social security guarantees] should specify the range, qualifying conditions and levels of the benefits giving effect to these guarantees. Impartial, transparent, effective, simple, rapid, accessible and inexpensive complaint and appeal procedures should also be specified. Access to complaint and appeal procedures should be free of charge to the applicant. Systems should be in place that enhance compliance with national legal frameworks. (para. 7)

52. In funding social protection schemes, Malaysia should also be cognizant of its obligations under international human rights law to engage in the progressive realization of the right to an adequate standard of living that includes the right to food.[29] The progressive realization of the right to food requires the State to pursue the maximum use of available resources. Where gaps are left in social protection schemes as a result of an apparent lack of

[29] See the Convention on the Rights of the Child, art. 4, and the Convention on the Rights of Persons with Disabilities, art. 4 (2).

funding, resources should be mobilized by appropriate tax policies to ensure that vulnerable groups or persons are not left behind.

D. Migrant workers

53. Malaysia hosts an estimated 1.8 million documented and 2 million undocumented migrant workers, accounting for nearly a third of the country's workforce.[30] Roughly 70 per cent of labourers on palm oil plantations in the country are migrant workers, most commonly from Indonesia.[31] The Cabinet Committee on Foreign Workers (JKKPA-PATI) sets policy on foreign workers at the national level, while Sabah and Sarawak are each responsible for their respective immigration legal framework and policy direction.

54. Despite the positive step taken by the State of introducing a minimum wage, the Special Rapporteur is greatly concerned about the legal situation and working conditions of documented and undocumented migrant workers in Malaysia, and the impact that they have on the rights of migrant workers to have an adequate standard of living, including access to adequate food.

55. Notwithstanding protection afforded by legislation, such as the Anti-Trafficking in Persons and Smuggling of Migrants Act of 2007 and the Employment Act of 1955, migrant workers, and in particular those who are undocumented, often face abuse and malpractice, unfavourable employment terms (such as low wages and informal or unwritten contracts of employment), coercion at various stages of the recruitment, migration and employment process, and hazardous working conditions (long hours of work, physically demanding and arduous jobs, workplace injuries and ill health, limited social protection coverage). Some migrant workers in Malaysia are the victims of trafficking in persons as they are recruited through fraud or deception for the purpose of exploitation. Workers from Indonesia, the Philippines, Nepal, Viet Nam and Myanmar have reported restrictions on their freedom of movement, retention of passports and delayed or non-payment of wages.[32] Some find themselves in a form of debt bondage until they are able to repay the fees charged during the recruitment process.[33]

56. Working permits in Malaysia are linked to one specific employer, making the situation of migrant workers wishing to report cases of abuse, even by legal means, precarious as termination of employment results in the cancellation of working permits, depriving them of the right to stay and work lawfully in Malaysia. The fear of retaliation has a chilling effect on migrant workers reporting human rights abuses to the authorities.

57. The Special Rapporteur is encouraged by recent efforts made by the federal Government to grant an amnesty to undocumented migrant workers in the country by means of the 6P programme. The programme aims to create a comprehensive database of all foreigners in the country regardless of whether they are documented. As part of the programme, the Government has adopted temporal opportunities for undocumented migrant

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[30] ILO, Quarterly Briefing Note, October – December 2013, Malaysia (see footnote 4). See also Amnesty International, *Trapped. The Exploitation of Migrant Workers in Malaysia*, March 2010 (available from www.amnesty.org/en/library/info/ASA28/002/2010), p. 6.

[31] Humanity United, Exploitative Labor Practices (see footnote 27), p. 20.

[32] Verité, "Sustainable Palm Oil? Promoting New Measures to Combat Risks of Forced Labor and Human Trafficking in Palm Oil Supply Chains", white aper, May 2013, available from www.verite.org/sites/default/files/images/Palm_White_Paper_May_2013_Final_Draft_0.pdf, p. 3.

[33] ITUC, *From Bahrain to Malaysia: Mobilizing to Defend Migrants' Rights*, December 2010, available from www.ituc-csi.org/from-bahrain-to-malaysia.

workers to regularize their status. An initial registration period, from 11 July to 31 August 2011, saw 2,320,034 foreign workers, of whom slightly more than half were undocumented, become registered across the country. Providing regularized status for undocumented workers will help to reduce the ability of employers to exploit their employees.

58. The Special Rapporteur recommends that a review of the situation of migrant workers be done at a high level by the federal Government, as well as by the governments of Sabah and Sarawak. The National Inquiry into the Land Rights of Indigenous Peoples could serve as a model. Such an inquiry could determine, for instance, whether undocumented migrant workers filing a complaint for abuse could be issued residence permits, at least pending the end of the legal proceedings; this would institutionalize a practice already informally followed by the Department of Labour in Sabah, and it would avoid these workers being fearful of filing a claim.

59. The Special Rapporteur is also encouraged by some programmes that designed to address the issues facing migrant workers. For example, on 2 October 2013, the Cabinet Committee on Foreign Workers and Illegal Immigrants endorsed a programme to assist employers and migrant workers who have been deceived by recruitment and outsourcing companies. The programme ran from 21 Oct 2013 to 20 January 2014. A national strategy for migrant workers that addresses immigration, working conditions and socioeconomic concerns is however necessary. The above-mentioned Inquiry could serve as a model for reviewing the situation of migrant workers and making recommendations with regard to addressing human rights concerns.

E. Refugees

60. Another group who find themselves at risk of food poverty in Malaysia is the population of about 200,000 refugees and asylum seekers. Malaysia is not a party to the Convention relating to the Status of Refugees and the Protocol thereto; refugees whose status has been so determined by the Office of the United Nations High Commissioner for Refugees (UNHCR) are therefore not recognized under Malaysian law. Refugees recognized by UNHCR have access to public health care at a rate lower than that for other foreigners. Asylum seekers and refugees do not, however, have access to the formal labour market, and are expected to rely on the charity of non-governmental organizations for their livelihoods.

61. Likewise, refugee children are not permitted to attend public schools and depend on informal schools set up by the refugee community, with some limited support from the United Nations system and non-governmental organizations. Such an arrangement negatively affects the future livelihood opportunities for these children. Refugees are relegated to jobs in the informal market, and often must accept work for below the minimum wage and in substandard conditions.[34] In this regard, the Special Rapporteur recalls that Malaysia has obligations under article 22, paragraph 1 of the Convention on the Rights of the Child to ensure that such children receive appropriate protection and humanitarian assistance in the enjoyment of the applicable rights set forth in the Convention.

[34] See Mohd Hamdan Adnan, "Refugee issues in Malaysia: the need for a proactive, human rights based solution", *Malaysian Journal on Human Rights*, vol. 6 (2012), p. 26.

VII. Indigenous communities, their land and livelihoods

62. Indigenous peoples in Malaysia, also referred to as the Orang Asal ("original people"), comprise the Negrito, Senoi and Proto Malay in peninsular Malaysia, collectively known to as the Orang Asli, and around 100 ethnic and sub-ethnic groups in East Malaysia, collectively called Orang Uluor or Dayak in Sarawak, and Anak Negeri in Sabah. The Orang Asli number some 178,000 people, about 0.6 per cent of the population. The number of indigenous peoples in East Malaysia is estimated at around 2.8 million people, about 50 per cent of the populations of Sabah and Sarawak.[35]

63. A significant number of Orang Asal live in rural areas and have a special relationship to their lands and the ecosystems, which serve as a source of livelihood and cultural identity. While there is a lack of specific statistics on the situation of individual ethnic groups in Sabah and Sarawak, it is generally recognized that these indigenous rural communities are among the poorest and most vulnerable groups in the country.

A. Land rights of indigenous peoples

64. During his visit, the Special Rapporteur heard a range of testimonies of indigenous peoples from peninsular Malaysia, Sabah and Sarawak. While the legal and policy framework to protect the rights of indigenous peoples presents differences across States, the concerns expressed by indigenous communities were very similar. They related, in particular, to problems faced in their access to traditional sources of livelihood as a result of encroachment on their lands and the degradation of ecosystems caused by development projects, logging and the expansion of palm oil plantations. Closely related to such concerns were the problems faced by communities in acquiring official recognition of native customary land rights and in participating in the decision-making processes related to major development projects affecting their lands and livelihood.

65. As noted elsewhere by the Special Rapporteur,[36] and as highlighted in the report of the National Inquiry into the Land Rights of Indigenous Peoples, released by SUHAKAM on 5 August 2013,[37] access to land presents a direct relationship to the right to food: where indigenous communities have lost access to the forests and land that they depend on for their livelihood, they can fall into a situation of food insecurity and extreme poverty.

66. The Special Rapporteur commends SUHAKAM for conducting the Inquiry. The recommendations made in its report are in line with international human rights norms and standards, including the United Nations Declaration on the Rights of Indigenous Peoples, and jurisprudence from Malaysian courts.[38] In this regard, the Special Rapporteur welcomes the fact that a task force has been set up by the Government to consider ways to implement the recommendations made in the report.

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[35] See Human Rights Commission of Malaysia (SUHAKAM), *Report of the National Inquiry into the Land Rights of Indigenous Peoples*, April 2013 (available from www.forestpeoples.org/sites/fpp/files/publication/2013/07/suhakam-enquiry-full-text2013.pdf), pp. 10-17; and Internatinoal Work Group for Indigenous Affairs, *The Indigenous World 2013*, May 2013(available from www.iwgia.org/publications/search-pubs?publication_id=613) p. 258.

[36] A/HRC/13/33/Add.2 and A/65/281.

[37] Human Rights Commission of Malaysia, *Report of the National Inquiry* (see footnote 35), p. xii.

[38] In the 2002 case of *Sagong Tasi & Ors v. Kerajaan Negeri Selangor & Ors*, the High Court ordered that compensation be awarded to a group of Temuan (Orang Asli) in Selangor that had been displaced from their ancestral lands to accommodate the construction of a highway from Kuala Lumpur to the new international airport.

67. Indigenous peoples of Malaysia have clear systems of land tenure, whether individual or collective, based on *adat* (customary systems). Their customary land rights are recognized in different laws and policies, such as the Sabah Land Ordinance (1930) and the Sabah Land Use Policy (2010); the Sarawak Land Code (1958); the Aboriginal Peoples Act (1954) and the National Land Code (1965). Yet, as demonstrated by SUHAKAM, the statutory laws relating to land in Sabah, Sarawak and peninsular Malaysia that give recognition to traditional land tenure systems fall short for three main reasons: (a) a lack of recognition by the authorities of the concept of customary land, or what constitutes customary land, resulting in considerable land not being registered as customary land with the relevant government departments; (b) inefficiency on the part of the government agencies concerned in "processing" land ownership claims; and (c) a lack of consultation with the indigenous peoples.[39] In particular, the Special Rapporteur is concerned that customary land rights are being defined too narrowly by all governments as land that has been actively and productively used since a given point in time; this results in effectively excluding land used by indigenous groups for foraging, hunting and fishing, or land used in rotational agriculture, whereby land is left fallow for a number of years before people are allowed to return to it. As a result, the indigenous communities not only lose their access to this land, but when land is developed for commercial uses, indigenous groups are not consulted and are not given any compensation.

68. In this regard, the Special Rapporteur recalls the obligation of the Government to ensure the demarcation and protection of native customary land rights, as underlined in the United Nations Declaration on the Rights of Indigenous Peoples. Under the Declaration, States are required to give legal recognition and protection to the lands, territories and resources that indigenous peoples have traditionally owned, occupied or otherwise used or acquired. They are also required to recognize the right of indigenous peoples to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

B. Development projects

69. During his visit, the Special Rapporteur met with indigenous communities affected by large-scale development projects and the expansion of commercial plantations. He heard, inter alia, concerns about the relocation and resettlement of communities for development projects and the need to find ways to improve dialogue between the Government and the communities affected. In Sabah, he visited communities in the Ulu Papar region, where the proposed construction of a dam would require the displacement of nine villages, which would have an impact on the communities' agricultural land and sources of livelihood.

70. The allocation of competences between the Federation and the States leads to differing, though broadly similar, requirements for environmental impact assessments in Sabah, Sarawak and peninsular Malaysia for resource-based projects (namely, for land development). While environmental impact assessments are required for all major development projects in Malaysia, however, social impact assessments are not systematically required, and are in fact only made where large-scale development projects lead to the resettlement of communities. Although social impact assessments include some elements that would overlap with human rights impact assessments, the latter, which would

[39] Human Rights Commission of Malaysia (SUHAKAM), *Report of the National Inquiry into the Land Rights of Indigenous Peoples* (2013), pp. vi, 22 and 28

rely on the normative requirements of human rights and be prepared with the participation of the people affected, are not made.

71. The Special Rapporteur recommends that all levels of government begin to institute social impact and/or human rights impact assessments with environmental impact assessments. They should be conceived as a means to build trust between the authorities in charge of development projects and the communities affected. The process would have to be conducted transparently, with the provision of adequate information to communities affected; include the full consideration of all alternatives; and be undertaken prior to the launch of any project (rather than as a means to validate a project already commenced). The Special Rapporteur also recommends that follow-up assessments be conducted throughout and after the conclusion of any project to address ongoing or arising concerns, and that any human rights violations that have occurred be remedied.

72. In the above regard, the Special Rapporteur also stresses the importance of the principle of free, prior and informed consent for any change to the lands and territories of the indigenous peoples, as also provided for in the United Nations Declaration on the Rights of Indigenous Peoples. Article 19 of the Declaration requires States "to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources". Similarly, consultations should allow for discussion about alternatives and serve to ensure that, consistent with the right to development, development projects will "aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom".[40]

73. Free, prior and informed consent requires that any option proposed to the indigenous communities be part of a range of alternative options from which they should be able to make a genuine choice, and that the said communities be fully informed of the long-term consequences of such a choice on their livelihoods. It is not enough to consult the communities about the consequences of development choices made on their behalf without their involvement; instead, they must have a right to oppose the project proposed.

VIII. Food adequacy

74. Malaysia, like many other middle-income countries today, is experiencing a nutrition transition, characterized by a shift to more processed foods, generally higher in saturated fats, sugars and salt, and to more sedentary lifestyles. In the light of the increasing rates of obesity and diabetes in the country, the Special Rapporteur is concerned about the adequacy of diets available to Malaysians. Obesity increased threefold among adults between 1996 and 2006, from 4.4 per cent to 14 cent, then increased more gradually to 15.1 per cent in 2011.[41] Diabetes rates have also seen a steady increase over the same period, with current figures suggesting that around 15 per cent of Malaysians are now diabetics.[42]

75. Addressing changing diets and rising rates of non-communicable diseases requires coordinated and interministerial action. In this respect, the Special Rapporteur lauds the

[40] General Assembly resolution 41/128, preamble.

[41] Geok-Lin Khor, "Food availability and the rising obesity prevalence in Malaysia", International e-Journal of Science, Medicine and Education, 2012, vol. 6, suppl. 1), p. 61.

[42] See the speech of the Prime Minister on the 2014 budget (see footnote 28), para. 163.

National Plan of Action for Nutrition of Malaysia2006-2015 and the National Strategic Plan for Non-Communicable Diseases 2010-2014. The National Plan of Action for Nutrition involves and coordinates the efforts of 29 government and non-governmental agencies in an effort to achieve and maintain the nutritional well-being of Malaysians. The National Strategic Plan focuses on seven strategies for the prevention and control of non-communicable diseases through a "whole-of-government" and "whole-of-society" approach. The Special Rapporteur also commends Malaysia for the recent policy decision to end subsidies for sugar in an effort to reduce the sugar intake of Malaysians in the face of rising obesity and diabetes rates.[43] the Special Rapporteur notes, however, that Malaysia will need to continue to invest and engage in strategic planning to address diabetes and obesity and the inadequacy of diets if it is to ensure a healthy population in the future.

76. Malaysia is also taking important strides to reduce malnutrition in children and to introduce healthy eating education at an early age. Healthy school canteen guidelines are addressed to school canteen operators and identify the types of food that should be sold. Programmes such as the Rehabilitation Programme for Malnourished Children and the ones aimed specifically at Orang Asli children have provided immediate assistance to families as well as communities to improve the nutritional status of malnourished children. The said programmes might not, however, be meeting all families in need and, as a result, may only have a limited impact. Concerns have been raised by civil society that programmes often end too early; as a result, children enter primary school still undernourished. The Supplementary Feeding Programme (RMT) and School Milk Programme (PSS) in schools, coordinated by the Ministry of Education, work to ensure that primary school pupils whose families have a monthly income of less RM520 to RM 660 (depending on their location) are provided with nutritious meals and milk at school. Despite these efforts, however, the Special Rapporteur heard concerns from civil society about the quality and nutritional value of foods available in school canteens, and that children were not consuming sufficient quantities of fruit and vegetables. Although the rates of childhood obesity in the country are disputed, promoting healthy eating from a young age can ensure that children are educated about healthy diets and have the tools to make proper choices about their nutritional intake as they grow older.

77. Supporting breastfeeding is another means by which the Government of Malaysia can support adequate diets and a healthy start for children. The increasing prevalence of women in the workforce (the Ministry of Human Resources suggests women made up 56.4 per cent of the workforce in 2013) may pose challenges to breastfeeding. The Special Rapporteur encourages the Government to continue and further develop programmes to assist employers in providing affordable child-care options for women in the workplace, and to ensure that facilities exist where women can breastfeed or express milk. Similar facilities should be made available in other public spaces. Other programmes, such as peer education for new mothers and strengthened protection of maternity leave, could further provide women with the resources needed to breastfeed their children.

IX. Concluding observations and recommendations

78. **Malaysia has adopted a wide range of policies and programmes under the Tenth Malaysia Plan to ensure the effective enjoyment of the right to food as part of the right to an adequate standard of living. Impressive results have followed in the form of a continuous reduction of income poverty. Innovative measures have been taken to enhance intersectoral coordination in the implementation of these**

[43] Ibid.

programmes, such as mechanisms to monitor and assess progress of the Economic Transformation Programme and the Government Transformation Programme coordinated by the Performance Management and Delivery Unit, established in 2009 under the Department of the Prime Minister.

79. The Special Rapporteur notes, however, that more should be done to facilitate non-governmental oversight of government action. In particular, appropriately disaggregated statistical data should be more easily accessible and further space should be created for dialogue with civil society partners. The process of formulating the Eleventh Malaysia Plan 2016-2020 as well as efforts under way to develop a national human rights plan of action offer ideal opportunities to institutionalize intersectoral coordination and the participation of civil society.

80. The Special Rapporteur recommends that the Government of Malaysia:

(a) Proceed with the adoption of International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and other key treaties not yet ratified;

(b) Develop the national human rights plan of action through an inclusive process to coordinate action for the realization of the full range of human rights covered in the Universal Declaration of Human Rights, including the right to adequate food;

(c) Improve the balance between land used for the production of industrial commodities and land for food crops for local consumption;

(d) Limit the further expansion of palm oil plantations and encourage the allocation of land to food production, the intercropping of food crops with oil palm, and the setting aside of a certain percentage (for example, 15 per cent) of land for food production within any new palm oil plantation;

(e) Support initiatives to enhance the sustainability of palm oil production, building upon such initiatives as the Roundtable on Sustainable Palm Oil;

(f) Ensure that the minimum wage provides a living wage that ensures access to an adequate standard of living, including the adequate food;

(g) Assess and address child labour on plantations, including the impact of piecemeal wages and the lack of educational opportunities for the children of undocumented migrant workers;

(h) Undertake a national inquiry on the situation of migrant workers (documented and undocumented) with a mandate to recommend measures to strengthen the protection of their human rights;

(i) Consider further amnesty periods to regularize undocumented migrants and provide adequate information, and to enable them to regularize their situation;

(j) Ensure that migrant workers have access to complaints mechanisms in cases of abusive employment conditions, and are allowed to remain and work in Malaysia until complaints of abuse made have been resolved;

(k) Adopt a coordinated and cohesive rights-based social protection scheme that includes claims mechanisms established at a decentralized level; is free and accessible without excessive formalities and without barriers for ethnic groups; and has the capacity to process these claims and the power to prescribe remedies;

(l) Accede to the Convention relating to the Status of Refugees and the Protocol thereto, as also recommended by the Committee on the Rights of the Child[44] and the Working Group on Arbitrary Detention,[45] and take immediate steps to ensure that refugees and asylum seekers with UNHCR identification documents are allowed to work and that refugee children are admitted to public schools;

(m) Implement the key recommendations based on the National Inquiry into the Land Rights of Indigenous Peoples; in particular, set up a national commission on indigenous peoples, which could serve as public advocate to safeguard the rights of indigenous peoples and ensure that the legislation and policies of the State are consistent with the United Nations Declaration on the Rights of Indigenous Peoples;

(n) Ratify the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), and incorporate and operationalize the principle of free, prior and informed consent in matters concerning development projects affecting the lands and livelihoods of indigenous peoples;

(o) Expand and continue to build upon efforts to curb obesity and diabetes in both children and adults through interministerial coordination looking at agro-policies, food subsidies, adult education, advertising laws, and promoting healthy eating in schools through educational programmes, as well as food choices in school feeding programmes;

(p) Develop a strategy to promote and encourage breastfeeding by addressing barriers, including by providing child-care and breastfeeding options in the workplace, peer education for new mothers, and strengthened protection for maternity leave.

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[44] CRC/C/MYS/CO/1, para. 83 (b).

[45] A/HRC/16/47/Add.2, para. 118.